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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of )  
 )  
**Reexamination of the Policy** )  
**Statement on Comparative** )  
**Broadcasting Hearings** )

GC Docket No. 92-52

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JUL 22 1994

To: The Commission

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**JOINT COMMENTS OF  
THE ASSOCIATION OF AMERICA'S PUBLIC TELEVISION STATIONS  
AND NATIONAL PUBLIC RADIO**

The Association of America's Public Television Stations ("APTS") and National Public Radio ("NPR") hereby submit their Joint Comments in response to the Commission's *Second Further Notice of Proposed Rulemaking*, FCC 94-167, released June 22, 1994, in the above-captioned proceeding ("*Second Further Notice*"). APTS is a nonprofit membership association whose members comprise virtually all of the nation's 351 public television stations. Among other things, APTS represents its membership on a national level by presenting the stations' views to the Commission, Congress, the Executive Branch and to other federal agencies and policy makers. NPR is a nonprofit, noncommercial organization which provides programming and interconnection services to more than 500 full-service public radio stations. NPR also represents those stations in developing and maintaining a viable and diverse public radio service for the American public.

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**A. APTS' and NPR's Initial Joint Comments  
Remain Valid After the Bechtel Decision**

In the *Second Further Notice*, the Commission requested comment on, *inter alia*, what objective and rational criteria it might use to decide comparative broadcasting hearings in light of the decision in *Bechtel v. FCC*, 10 F.3d 875 (D.C. Cir. 1993). That decision invalidated the continued use of the integration criterion on the grounds, among others, that it is not a reliable predictor of the quality of service that an applicant would provide. *Id.* at 880-81.

In their Joint Comments in response to the initial *Notice of Proposed Rule Making* in this proceeding, APTS and NPR maintained that the Commission should not employ the criteria used in commercial comparative hearings -- however they might be refined in this proceeding -- in noncommercial hearings. See *Joint Comments of APTS and NPR in GC Docket No. 92-52*, (June 2, 1992) ("*Joint Comments*"). APTS and NPR demonstrated that the commercial comparative criteria had little, if any, relevance to the nature of the service noncommercial stations were expected to provide. See, *Joint Comments* at pp. 7-15. In comparison, the comparative criteria employed by the Commission in noncommercial comparative hearings were reasonably tailored to predict the quality of service which a noncommercial applicant was likely to provide. See, *Joint Comments* at pp. 17-32. Consequently, APTS and NPR argued the current noncommercial comparative criteria were the most valid basis upon which to decide those cases. While APTS and NPR acknowledged that the criteria were difficult

to apply, they maintained that the cure was not to reject the criteria but to provide more guidance as to how they should be applied. *See, Joint Comments* at pp. 3, 16-17.

The Court of Appeals decision in *Bechtel* does not alter the validity or relevance of that position in any way. The integration criterion has never been a part of noncommercial comparative hearings and the criterion has no relevance to those proceedings. Indeed, if anything, the rationale of the *Bechtel* decision -- that the Commission must validate the relevance of its decisional criteria to the service offered -- fully supports APTS' and NPR's position that the proper approach to noncommercial comparative hearings is to refine the current noncommercial criteria rather than to reject them. Those criteria bear a close relationship to the service that a noncommercial licensee should provide and their continued use is consistent with the rationale of *Bechtel*.

**B. The Rationale of *Bechtel* Requires Discarding the "Share-Time" Concept**

In their Joint Comments, APTS and NPR also argued that, as part of any refinement of the noncommercial criteria, the Commission should abandon the "share-time" concept designated in most noncommercial radio proceedings and should not extend the issue to comparative noncommercial television proceedings. *See, Joint Comments* at pp. 32-35. As demonstrated in their Joint Comments, the quality of service offered by stations licensed subject to a share-time requirement is substantially below that of most noncommercial educational radio stations. *Id.* Given this objective evidence that reliance on the share-time issue results

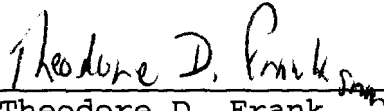
in inferior service, the rationale in *Bechtel* supports the position of APTS and NPR that the issue should be discarded. Whatever the initial justification might have been for adding the share-time issue to noncommercial comparative hearing, experience has demonstrated beyond peradventure that requiring applicants to share time on a facility disserves the public interest. Accordingly, under the rationale of *Bechtel*, the issue must be dropped from noncommercial hearings.

### **Conclusion**

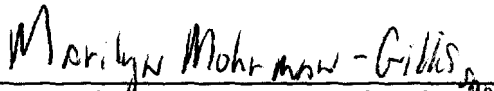
For the reasons set forth above, APTS and NPR submit that the decision in *Bechtel v. FCC, supra*, does not affect the continuing validity of their initial comments that the Commission should retain the current decisional criteria in noncommercial proceedings and provide further guidance concerning the manner in which they are employed. If anything, the decision reinforces

that position and requires the Commission to discard the "share-time" issue in noncommercial comparative hearings.

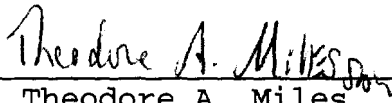
Respectfully submitted,



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